

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF ALABAMA  
SOUTHERN DIVISION**

MOBILE BAYKEEPER, INC.,

Plaintiff,

V.

ALABAMA POWER COMPANY,

Defendant.

CASE NO.: 1:22-cv-00382-KD-B

**PLAINTIFF’S RESPONSE AND OBJECTION TO DEFENDANT’S NOTICE OF  
ALABAMA DEPARTMENT OF ENVIRONMENTAL MANAGEMENT’S COMMENTS  
ON PROPOSED DENIAL OF CCR PERMITTING PROGRAM**

Mobile Baykeeper (Baykeeper) submits this response and objection to Alabama Power’s recent filing, which is styled as a “notice” of the comment letter submitted by the Alabama Department of Environmental Management (ADEM) objecting to the U.S. Environmental Protection Agency’s (EPA) proposed denial of ADEM’s application to operate a federal CCR Rule permitting program in Alabama. Doc. 98.

Civil Local Rule 7(f) of this Court provides that the Court “does not prohibit or restrict the citation of unreported or nonprecedential opinions, decisions, orders, judgments, or other written dispositions.” S.D. Ala. CivLR 7(f)(1). The Rule further provides that “[i]f pertinent and significant authority comes to a party’s notice after the briefs have been filed, but before decision, a party may promptly advise the Court by notice setting forth the citations and stating the reason the authority was not cited in the party’s brief” and that the notice “must not present a new argument.” S.D. Ala. CivLR 7(f)(3).

ADEM's letter submitted to EPA during a public comment period is not an opinion, decision, order, judgment, disposition, or authority. Instead, ADEM's comment letter sets out the

arguments of a disappointed party that has submitted an application that EPA has proposed to deny. This filing is the submission of additional argument concerning issues that have been thoroughly briefed to the Court and additional factual and other arguments that ADEM puts forth to protest EPA's proposed denial and that have not been the subject of briefing before the Court. Moreover, ADEM's comment letter is not a relevant authority for this Court because ADEM has no authority concerning the federal CCR Rule, as Baykeeper has explained and as the Magistrate Judge's Report and Recommendation sets out. Doc 95 at 1-9, Doc. 91 at 24-26.

For these reasons, Baykeeper respectfully requests that the Court strike or disregard Alabama Power's Notice, Doc. 98, and the accompanying exhibit, Doc. 98-1, in their entirety.

Respectfully submitted, this 16th day of November 2023.

s/ Barry A. Brock  
Barry A. Brock  
*One of the Attorneys for Plaintiffs*

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**CERTIFICATE OF SERVICE**

I hereby certify that, on November 16, 2023, I electronically filed the foregoing document with the Clerk of Court using the CM/ECF system, which will send notification of the filing to all counsel of record.

s/ Barry A. Brock  
Barry A. Brock  
*One of the Attorneys for Plaintiffs*